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Attorney for Plaintiff/Certified Class
 Representative Craftwood II, Inc.,
 d/b/a Bay Hardware, and for the Certified
 Settlement Class

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION**

CRAFTWOOD II, INC., a California
 corporation, d/b/a as Bay Hardware,
 individually and on behalf of all others
 similarly situated,

Plaintiffs,

v.

TOMY INTERNATIONAL, INC. *etc.*, *et*
al.

Defendants.

Case No. SACV12-1710 DOC (ANx)

CLASS ACTION

**Memorandum in Support of Joint
 Motion for Approval of Distributions
 of Uncashed Settlement Checks**

Date: October 26, 2015
 Time: 8:30 a.m.
 Courtroom: 9D
 Before: Judge David O. Carter

Discovery Cut-Off: N/A
 Pre-Trial Conf.: N/A
 Trial: N/A

1 Of the nearly \$7,000,000 distributed to class members in settlement of this
 2 matter, there is only \$40,008.01 remaining in uncashed settlement checks. The
 3 Settlement Agreement provided for this contingency and states that: "In the event
 4 that there are any monies remaining of the Claims Payment Amount [i.e., the net
 5 amount distributable to the class] after payment of all Shares, including monies
 6 represented by Uncashed Checks, then such remaining monies will [be] distributed
 7 as ordered by the Court. Settlement Class Counsel and TOMY shall make
 8 recommendations or proposals to the Court as to how any such remaining monies
 9 should be distributed."

10
 11 Settlement Class Counsel and TOMY's counsel have met and conferred and
 12 recommend that the Court approve the following distributions of the \$40,008.01¹:
 13

14 1. There are three checks totaling \$11,106.14 that were re-issued at the
 15 request of class members near the deadline for the cashing of checks, but were not
 16 timely cashed by the deadline.² It is recommended that new checks be issued to
 17 these three class members and that they be given 30 days from issuance to cash their
 18 checks.
 19

20 2. The remainder (including any checks of paragraph 1 that are not timely
 21 cashed) be split on a 50/50 basis between (1) the Electronic Privacy Information
 22 Center ("EPIC") and (2) the Ann & Robert H. Lurie Children's Hospital ("Lurie
 23

24 _____
 25 ¹ These recommendations are severable in that the Court can accept or reject
 26 all or part of the recommendations and its decisions on one or more of the
 27 recommendations does not affect the other recommendations.

28 ² These three class members and the amount of their checks are as follows:
 Clatsop Power Equipment (\$6,276.82); Stoltz Sales & Service (\$4,345.49) and Alba
 Santana (\$482.83).

Children's"). EPIC was selected by Settlement Class Counsel and Lurie Children's was selected by TOMY.

3. EPIC is a consumer privacy organization located in Washington D.C., and represents that it is a 501(c)(3) non-profit entity. EPIC advocates for privacy rights on behalf of consumers, including under the Telephone Consumer Protection Act (the statute under which this case was brought) and represents that EPIC's Executive Director, helped to draft the TCPA in 1990 (Testimony of April 24, 1991 available at <https://archive.org/details/org.c-span.18726-1>) and EPIC currently maintains three webpages on the TCPA and telemarketing protection - epic.org/privacy/telemarketing, <https://epic.org/privacy/telemarketing/preemptiveattack.html>, and <https://epic.org/privacy/telemarketing/dnc/> - to educate and provide resources to the public and provided the FCC with formal comments and recommendations on the implementation of the Junk Fax Prevention Act (January 18, 2006, available at <https://epic.org/privacy/telemarketing/jfpacom11806.html>).³

4. The Ann & Robert H. Lurie Children's Hospital of Chicago, is one of the nation's leading pediatric medical centers. Lurie Children's, formerly Children's Memorial Hospital, provides superior pediatric care in a setting that offers the latest benefits and innovations in medical technology, research and family-friendly design. As the largest pediatric healthcare provider in the Midwest with a 130 year legacy of excellence, kids and their families are at the center of all Lurie Children's does. In FY 2014 Lurie Children's served children from all 50

³ Settlement Class Counsel is also informed that EPIC has received cy pres awards in several cases, including: *Mirfasihi v. Fleet Mortgage Corp.*, 01 C 722, 2007 WL 2608778 (N.D. Ill. Sept. 6, 2007) aff'd, 551 F.3d 682 (7th Cir. 2008); *In re Netflix Privacy Litigation*, No. 11-00379 (N.D. Cal. filed Jan. 26, 2011); *Desai v. ADT Security Services, Inc.*, No. 11-1925 (N.D. Ill. filed Mar. 21, 2011).

1 states and 48 countries. Lurie Children's treats more children insured by Medicaid
2 than any other hospital in Illinois and in FY 2014 it incurred \$88 million in losses
3 due to Medicaid reimbursement below cost of services and other uncompensated
4 costs. Philanthropy plays a critical role in accomplishing the mission of Lurie
5 Children's, especially in today's increasingly challenging health care environment.
6 The Ann & Robert H. Lurie Children's Hospital of Chicago Foundation is a
7 charitable 501(c)(3) tax-exempt organization, through which all gifts benefit Lurie
8 Children's. Further information regarding Lurie Children's, the care it provides and
9 its pediatric research and children's advocacy programs, may be found on its
10 website at: www.luriechildrens.org. As a leading provider of toys, infant and
11 mother's products, it is appropriate that TOMY has proposed that Lurie Children's,
12 an institution devoted to providing medical care to children across the country and
13 the world, receive one-half of the remaining settlement funds in this case.

14
15 Craftwood and TOMY jointly request that the Court enter an order (in the
16 form concurrently lodged herewith) approving the above distributions from
17 uncashed settlement checks.

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Respectfully submitted,

Dated: September 23, 2015

Law Offices of Scott Z. Zimmermann and
Payne & Fears LLP

By: /s/ Scott Z. Zimmermann
Scott Z. Zimmermann
Attorneys for Plaintiff/Certified Class
Representative Craftwood II, Inc., dba Bay
Hardware, and the Certified Settlement
Class

Dated: September 23, 2015

Ice Miller LLP

By: /s/ Bart Murphy
Bart Murphy
Attorneys for Defendant TOMY
International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015, I electronically filed the foregoing with the Clerk of the United States District Court for the Central District of California using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Scott Z. Zimmermann
Scott Z. Zimmermann

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